



FROM THE DESK OF

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U.S. RAILROAD RETIREMENT BOARD

*Walter A. Barrows*

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### **Railroad Retirement Spouse and Widow(er)s' Annuities and Public Service Pensions**

Railroad Retirement Act spouse and widow(er)s' annuities (including divorced spouse, surviving divorced spouse and remarried widow(er)s' annuities) are subject to reduction when social security benefits or dual railroad retirement annuities are also payable. Such railroad retirement benefits may also be reduced when a spouse or widow(er) is entitled to a public service pension unless certain exemption requirements are met.

Since the payment of railroad retirement spouse or widow(er)s' annuities can be affected by entitlement to certain other government benefits, such dual entitlement, if not reported to the Railroad Retirement Board (RRB), can result in benefit overpayments which have to be repaid, sometimes with interest and penalties. The following questions and answers describe how payments are adjusted by the RRB for spouse and widow(er) annuitants entitled to public service pensions.

#### **1. For social security or railroad retirement purposes, what is considered a public service pension?**

A public service pension is any periodic benefit payment, as well as lump-sum payments made in lieu of periodic payments, based on an individual's own employment with a Federal, State, or local government unit. Some examples are pensions paid to teachers, police officers, and civil service personnel on the basis of age or disability. Full salary benefits paid to a retired or resigned judge under the Federal judiciary retirement system are also considered public service pensions.

Most military service pensions and payments from the Department of Veterans Affairs will not cause a reduction. A pension paid by a foreign government or an interstate instrumentality also has no effect on a spouse or widow(er)'s annuity.

#### **2. How is the public service pension reduction applied to railroad retirement spouse or widow(er)s' annuities?**

For spouses and widow(er)s subject to the public service pension reduction, the tier I reduction is, under current law, equal to  $2/3$  of the amount of the public pension. The amount of the public service pension is the current gross amount, before any deductions for income tax withholding, Medicare premiums, health insurance or other benefits.

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**3. What is the background of the public service pension reduction in spouse and widow(er)s' annuities and how does it affect such payments?**

The public service pension reduction in social security and railroad retirement spouse and widow(er)s' benefits was brought about by 1977 social security legislation which also applied to the tier I benefits of railroad retirement spouses and widow(er)s. The tier I portion of a railroad retirement annuity is based on railroad retirement credits and any social security credits an employee has acquired. It is computed under social security formulas and approximates what social security would pay if railroad work were also covered by that system. Tier I benefits are, therefore, reduced in the same manner as social security benefits when certain other benefits are also payable.

**4. Are there any provisions that would exempt railroad retirement spouse or widow(er) annuitants from the public service pension offsets?**

Generally, in order to be exempt from a public service pension reduction, Federal, State and local government workers must be covered by social security throughout their last 60 months of employment with the pension-paying government entity.

The public pension reduction also does not apply to a spouse or widow(er) who filed for and became entitled to her or his railroad retirement annuity before December 1977, or to a spouse or widow(er) whose public pension is **not** based on her or his own earnings.

**5. Where can more specific information on how these pension offsets affect railroad retirement benefits be obtained?**

Persons can contact an RRB field office for information as to how their public service pensions could affect their railroad retirement benefits via the agency's website, [www.rrb.gov](http://www.rrb.gov), or by calling toll-free at 1-877-772-5772. Most RRB offices are open to the public from 9:00 a.m. to 3:30 p.m., Monday through Friday, except on Federal holidays.

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### Railroad Retirement Spouse Benefits

In addition to the retirement annuities payable to employees, the Railroad Retirement Act provides annuities for the spouses of retired employees. Payment of a spouse annuity is made directly to the wife or husband of the employee.

**Many spouses who are eligible for such railroad retirement benefits are not applying for them.** In some cases this is due to the employee and/or spouse not being aware that such spouse benefits are available. However, it appears that in many cases this situation is due to spouses being eligible for non-railroad retirement benefits, such as social security benefits, based on their own work and earnings and their belief that they cannot receive railroad retirement spouse annuities. While certain benefits can cause a reduction in a portion of the railroad retirement annuity otherwise payable, **it is to the spouse's financial advantage to apply for a railroad retirement spouse annuity.**

The following questions and answers should clear up some of the misconceptions about spouse benefits that may exist in the railroad community.

#### 1. How are spouse annuities reduced for the receipt of other benefits?

The tier I portion of a spouse annuity is reduced for any social security entitlement, regardless of whether the social security benefit is based on the spouse's own earnings, the employee's earnings or the earnings of another person. This reduction follows principles of social security law which, in effect, limit payment to the higher of any two or more benefits payable to an individual at one time.

The tier I portion of a spouse annuity may also be reduced for receipt of any Federal, State or local pension separately payable to the spouse based on the spouse's own earnings. For spouses subject to the public service pension reduction, the tier I reduction is equal to  $\frac{2}{3}$  of the amount of the public service pension.

**While these offsets can reduce or even completely wipe out the tier I benefit otherwise payable to a spouse, they do not affect the tier II benefit potentially payable to that spouse.**

#### 2. What would be an example of how this reduction applies?

Mary, the spouse of a retired 60/30 employee, quits her social security-covered job as soon as she attains age 62 and applies for her social security benefit which, after the required age reduction, yields \$850 a month. Mary also applies for a railroad retirement spouse annuity. Her husband's

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railroad retirement annuity consists of a tier I benefit of \$1,600 a month and a tier II benefit of \$1,200 a month. Her gross spouse annuity would therefore consist of a tier I benefit of \$800 a month (50 percent of \$1,600 with no early retirement reduction as her husband is 60/30) and a tier II benefit of \$540 (45 percent of \$1,200 with no age reduction). Since Mary's own social security benefit is larger than her spouse tier I benefit, no tier I spouse benefit is payable in this case, but she would still be entitled to the spouse tier II benefit, yielding an additional \$540 in monthly income.

**3. How can someone get more information about railroad retirement spouse annuities?**

The RRB strongly encourages railroad employees and their spouses to contact an RRB field office prior to retirement for information about their benefit rights and/or a benefit estimate. Persons can speak to an agency representative or find the address of the RRB office servicing their area by calling the agency's toll-free number, 1-877-772-5772. Questions can also be sent to an RRB office via secure email through the agency's website, [www.rrb.gov](http://www.rrb.gov).

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### **Private Rail Pensions May Reduce Supplemental Annuities**

Railroad retirement beneficiaries are reminded that receipt of a private railroad pension may reduce the amount of a supplemental annuity payable by the Railroad Retirement Board (RRB). The following questions and answers provide information on this subject, as well as how distributions from a 401(k) plan affect supplemental annuities, and whether railroad employee contributions to 401(k) plans are subject to railroad retirement payroll taxes.

#### **1. What are the eligibility requirements for a supplemental annuity?**

Individuals receiving a railroad retirement age and service, or disability annuity, can be paid a monthly supplemental annuity at age 60, if the employee has at least 30 years of creditable railroad service, or at age 65 with at least 25 years of service. (Disabled annuitants under full retirement age, which ranges from age 65 to 67, depending on the year of birth, must relinquish employment rights in order for a supplemental annuity to be paid by the RRB.) A “current connection” with the railroad industry is also required, as is at least one month of creditable rail service before October 1981. The maximum monthly supplemental annuity rate is \$43.

#### **2. What effect does the receipt of a private railroad pension have on the payment of a supplemental annuity?**

If a retired employee also receives a private pension funded entirely or in part by a railroad employer, the supplemental annuity is permanently reduced by the amount of the monthly pension benefit that is based on the railroad employer’s contributions. However, if the employer reduces the pension for the employee’s entitlement to a supplemental annuity, the amount by which the pension is reduced is restored to the supplemental annuity (but does not raise it over the \$43 maximum). There is no reduction for a pension paid by a railroad labor organization.

#### **3. What if an employee elects to receive the pension in a lump-sum payment instead of as a monthly benefit?**

If a retired employee elects to receive his or her pension in a lump-sum payment instead of as a monthly benefit, the supplemental annuity is reduced in the same way as it would be if the employee was receiving the monthly benefit. If the lump sum is paid in installments, the installment payments are not considered monthly benefit payments, but part of the single, lump-sum payment.

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**4. Does the receipt of a 401(k) plan distribution reduce the amount of a supplemental annuity?**

No. In Legal Opinion L-2014-2, issued January 13, 2014, the RRB's General Counsel determined that 401(k) plans should not be considered supplemental pension plans as defined by the Railroad Retirement Act and, therefore, employee supplemental annuities should not be reduced due to the receipt of 401 (k) distributions.

In accordance with the legal opinion, the RRB removed the 401(k) distribution reduction from the supplemental annuities of affected beneficiaries effective January 1, 2014, or the supplemental annuity beginning date, whichever date is later. Refunds of the amounts previously deducted for the 401(k) distribution reduction (beginning on the applicable date above) were issued to those beneficiaries in July 2015.

**5. Are employee contributions to a 401(k) plan subject to railroad retirement tier I and tier II payroll taxes?**

Yes. Federal budget legislation enacted in 1989 and effective January 1, 1990, provided that employee contributions to 401(k) plans are subject to railroad retirement payroll taxes and brought the treatment of 401(k) plans under railroad retirement law into conformity with the treatment of such plans under social security law. Consequently, employee contributions to a 401(k) plan are also treated as creditable compensation for railroad retirement benefit purposes. For example, an employee earning \$40,000 a year, but who has 10 percent of his earnings deferred under a 401(k) plan, would have only \$36,000 reported to the IRS as earnings subject to Federal income tax. However, the entire \$40,000 would be subject to railroad retirement payroll taxes and therefore creditable as compensation under the Railroad Retirement Act.

**6. How can a person get more information about the effect of private rail pensions and 401(k) plan payments on supplemental annuities?**

Persons can contact an RRB field office for more information via the agency's website, [www.rrb.gov](http://www.rrb.gov), or by calling toll-free at 1-877-772-5772. Most RRB offices are open to the public from 9:00 a.m. to 3:30 p.m., Monday through Friday, except on Federal holidays.

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